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inherent right of constitutional courts, grounded in the necessity of maintaining dignified and orderly judicial procedure, the circuit courts have a valid claim to this weapon. The danger of malicious attacks on the integrity of the courts, and of premature discussion of the rights of litigants, is a real one. If the court may not invoke the summary power to prevent the contemnor from making further attacks while the case is pending, the damage will be complete before the offender is brought to trial. The contempt power is a wise preventive measure which the courts have for the most part used with restraint for the protection of litigants. There seems to be little feasibility in a legislative denial of its use by the circuit courts, especially in view of the constitutional protection against statutory limitation which is afforded the supreme court of appeals.

G. W. E.

UNITY PLAN IN DEDICATION OF WAYS

The recent case of *Huddleston v. Deans* gives rise to a problem over which there is a wide divergence of opinion, namely, the legal proposition known as the "unity plan".¹ It has been defined as a sale of lots with reference to a plat or map delineating streets and alleys whereby the purchasers acquire a right in *all* the ways designated thereon.² Generally it may be said that West Virginia has adopted the unity plan.³ Other jurisdictions limit the rights of the purchaser to those streets and alleys affording the lot owner necessary ingress and egress to his property.⁴ New York extends the right to those streets on which the lot owner's property abuts only as far as the first cross-street in each direction.⁵ Massachusetts is even more stringent.⁶

¹ 21 S. E. (2d) 352 (W. Va. 1942).

² 2 THOMPSON, REAL PROPERTY (Perm. ed. 1940) 38; 1 ELLIOTT, STREETS & ROADS (4th ed. 1926) 157.

³ In *Rudolph v. Glendale Improvement Co.*, 103 W. Va. 81, 87, 137 S. E. 349 (1927), the court said, "there are strong expressions in . . . [Cook v. Totten, 49 W. Va. 177, 38 S. E. 491 (1901) and *Edwards v. Moundsville Land Co.*, 56 W. Va. 43, 48 S. E. 754 (1904)] which would favor the unity rule if a case solely presenting that question . . . was to be decided. The great weight of authority sustains the unity rule; and the reasons for its adoption are very persuasive."

⁴ *State v. Hamilton*, 109 Tenn. 276, 70 S. W. 619 (1902); *Bell v. Todd*, 51 Mich. 21, 16 N. W. 304 (1883).

⁵ *Reis v. City of New York*, 188 N. Y. 58, 80 N. E. 573 (1907).

⁶ See *Regan v. Boston Gas & Light Co.*, 137 Mass. 37 (1884).

The case of *Cook v. Totten* points out a fundamental distinction:⁷ selling lots with reference to a plat constitutes dedication to the public of streets and alleys laid out thereon; but the individual purchasers also acquire the right to the use of the ways as platted. Furthermore, "While the public right to use and control depends upon the acceptance of the dedication to public uses, the private right of the purchasers is acquired at the time of the purchase and may precede the public's right." Tiffany recognizes the point: "The existence of a right of way in the vendee by reason of a sale to him by reference to a plat is entirely independent of whether any right exists in the public . . . is not dependent on the doctrine of dedication."⁸ The crux of the problem becomes this: To which right, the private easement of the lot owner or the general easement of the public, does the unity plan pertain? Or, is it applicable to both? This writer has been unable to find any case or textbook differentiating between public and private easements with regard to the applicability of the unity plan. It is believed that much of the difficulty in the West Virginia decisions has resulted from the confusion, in this respect, of these two separate and distinct issues.

Thompson, in his discussion of the unity plan, applies it to private easements without regard to the question of creation of a public right by acceptance of the dedication;⁹ on the other hand, Elliott asserts that those who purchase lots with reference to the plat "acquire a right in all the public ways designated thereon and may enforce the dedication."¹⁰ Apparently the former writer is using the unity plan in respect to private easements while the latter relates it to public easements. Rather than an active conflict of views it would appear to be an oblivious disregard of the distinction. The same criticism may be directed toward the West Virginia decisions.

In the past our court has, perhaps unconsciously, shuttled between two points. On the one hand it has applied the unity plan; on the other it has limited the lot owner's rights to those streets and alleys as are reasonably necessary for convenient access to and exit from the land conveyed. The case of *Cook v. Totten* is not unique among our decisions for having been cited for both propo-

⁷ 49 W. Va. 177, 38 S. E. 491, 87 Am. St. Rep. 792 (1901).

⁸ 3 TIFFANY, REAL PROPERTY (3d ed. 1939) 312. See also 2 THOMPSON, REAL PROPERTY 68.

⁹ *Id.* at page 38.

¹⁰ 1 ELLIOTT, STREETS & ROADS 157.

sitions. In adopting the language of Elliott the court says, "The unity doctrine of the plat or plan is decidedly the most equitable . . ." Later in the same case the court declared that the conveyance "necessarily includes the easement in all the streets and alleys of the plan necessary to the use, enjoyment and value of the lots."¹¹ The court in *Rudolph v. Glendale Improvement Co.*,¹² questioned this as a qualification to the principle that the right extends without reservation to all the ways outlined on the plat. Therein lies the difficulty. Was the court in the *Totten* case confining the unity plan to public easements created by dedication and acceptance, and the modified rule of "reasonable necessity" to private easements; or was it lending support to the unity plan, as applied in either instance, by implying that all the streets and alleys on the plat fall within the meaning of reasonable necessity? The issue is nicely circumvented by the undisturbed finding of the trial court, by way of fact, that all the ways on the plat actually fell within the scope of reasonable necessity. Confining its analysis of the *Totten* case to the *quaere* noted above, the court in the *Rudolph* case, laid aside the question of public dedication and acceptance and made a direct application of the unity plan to the private easement of the individual lot owner. "All such streets and alleys are presumed to be appurtenant to his lot."¹³

In the case of *Point Pleasant v. Caldwell*,¹⁴ the reasoning of the court seems influenced by the questionable proposition that acceptance of the dedication necessarily renders the municipality liable for the maintaining of all accepted streets and alleys in a reasonably safe condition for travel.¹⁵ Viewing this as an extreme burden on the town, the court reaches the conclusion that the city accepted only those streets upon which improvements had been made, and there "was not an acceptance of other streets which had not been opened or improved, or used by the public . . ." This decision simply refused to apply the unity plan to public dedication and acceptance; it held that acceptance by public user of a part of the streets

¹¹ See note 6.

¹² 103 W. Va. 81, 137 S. E. 349 (1927).

¹³ *Flanagan v. Brown*, 107 W. Va. 315, 148 S. E. 113 (1929) is a direct affirmation of this proposition.

¹⁴ 87 W. Va. 277, 104 S. E. 610 (1920).

¹⁵ *Contra*: *Hast v. Piedmont & C. R. R.*, 52 W. Va. 396, 44 S. E. 155 (1903): "In this State our decisions do not allow the public use of a way to operate as an acceptance of a dedication so as to bind the county" to make repairs (citing several West Virginia cases). See also, *Pence v. Bryant*, 54 W. Va. 263, 267, 46 S. E. 275, 277 (1903); *Huddleston v. Deans*, 21 S. E. (2d) 352, 357 (W. Va. 1942).

did not constitute an acceptance of all the streets laid out on the plat. Without explanation the court in the *Huddleston* case declared that the *Point Pleasant* case was distinguishable on factual grounds. A stronger case may have been developed by rejecting the basis on which the *Point Pleasant* decision rested its disapproval of the unity plan.¹⁶

The foregoing case review has been presented for the purpose of indicating the utter confusion of issues that has beset our court in its treatment of the problem at hand. The *Rudolph* case applied the unity plan to public easements and the *Point Pleasant* case refused to apply it; the *Totten* case applied it to private easements and the recent case of *Deitz v. Johnson*¹⁷ resorted instead to the rule of reasonable necessity. Judge Lovins in the principal case says that "the necessity of adhering to the unity rule, strongly upheld by the decisions of this Court, seems clear." However, the holding confined the rule to public easements. With regard to private easements the court had this to say: "The rights . . . acquired by the lot owners are in a measure limited by necessity." Unfortunately, the court makes no effort to explain why the unity plan is invoked in the one instance and rejected in the other.

It is the belief of this writer, however, that the distinction is justifiable on the basis of broad principle. It is axiomatic that rights in the public are superior to private rights. It follows that they are entitled to wider extension and greater protection in the interests of general welfare. In light of the unequal value of the two classes of rights, sound reason requires the application of proportionately weighted rules and principles. Without attempting a discussion of the merits of the unity plan as distinguished from the rule of reasonable necessity, it may be said that a relative differentiation between the two with regard to their applicability to the two classes of rights, is desirable.

G. S. B.

¹⁶ *Ibid.*

¹⁷ 121 W. Va. 711, 6 S. E. (2d) 231 (1939); see also, *Mason v. Wall*, 96 W. Va. 461, 123 S. E. 457 (1924).